

TURN THE TABLES IN PUBLICITY LAW FIGHT

Lawyers Quote Attorney General Wickersham's Opinion in Attack on Statute.

BECK ALSO FILES A BRIEF

Contents That Congress Cannot Compel Newspapers to Disclose Owners, Creditors or Circulation.

Washington, Nov. 30.—An unexpected turn was given to-day to the legal fight over the constitutionality of the newspaper publicity law by the attorneys for "The Journal of Commerce and Commercial Bulletin." Robert C. Morris and Guthrie B. Plante, filing with the Supreme Court of the United States an opinion by Attorney General Wickersham as their answer to Solicitor General Bullitt's argument in favor of the law.

James M. Beck, attorney for the Lewis Publishing Company, of New York, also attacked the law in a brief filed to-day. The case is set for oral argument on Monday.

The Solicitor General's defense of the law was built on the theory that it established new conditions regulating the admission of newspapers to second class mail.

Messrs. Morris and Plante, in reply to this argument, printed for the court the opinion which Attorney General Wickersham sent to Postmaster General Hitchcock on September 25, in which the Attorney General said the "provisions of the statute under consideration should not be construed with those of the statutes relating to second class mail matter."

The attorneys added that the construction given to the act by the Postmaster General in the enforcement of law, and authority was quoted that this construction should not be disturbed unless clearly wrong.

Power Over the Mails.

The brief submitted by Mr. Beck discusses the power of the federal government indirectly to censor the press through the regulation of the mails, and reviews at length the struggle in England and America to free the press from restraint, and the meaning of the First Amendment, forbidding any abridgment of the freedom of the press.

Mr. Beck argues that as the Constitution did not expressly give any power to regulate journalism, any attempted regulation can only be justified as a necessary and proper means to carry out some federal function. He denies that the regulation of newspaper ownership and the enforced publicity of its business can be an appropriate means of carrying out the federal power over the mails.

The brief reviews all of the decisions of the Supreme Court in which Congressional acts have been invalidated for want of constitutional power, and it is claimed that the present law is within the doctrine of those decisions.

Mr. Beck strongly denounces the idea that Congress can so use its powers as to accomplish unconstitutional ends. This brief calls "nullification" by indirection, and it cites the commodities clause of the Hepburn bill, Senator Beveridge's child labor bill and the present newspaper law as striking examples of an attempted perversion of federal power to accomplish ulterior and unconstitutional ends.

After reviewing the struggle which led both in England and America to the free press, Mr. Beck asserts that such liberty consists not only in freedom from absolute prohibition, but also in exemption from any burdensome or unreasonable restraint. Any undue burden on writing or publication or other restriction of the full right to print and circulate is declared an abridgment of the press and contrary to the First Amendment.

Burden for Weak Papers.

The brief argues that the enforced publication of a newspaper company's circulation and the publisher's creditors would unduly burden the power of the weak newspaper to compete with the stronger, and in many cases drive the weak newspaper to the wall.

Mr. Beck further argues that at the time the First Amendment was adopted the impersonal dissemination of ideas was generally recognized in discussion. The letters of "Junius" are cited, and it is declared the Constitution itself would never have been adopted had it not been for the Federalist papers, published anonymously by Hamilton, Madison and Jay.

It is asserted that any attempt to compel a newspaper to disclose either its owners or its creditors, or to compel it to mark as an advertisement matter which it has published for a consideration, restricts the freedom of discussion and is contrary to the custom of impersonal writing, which prevailed generally in England and America when the Constitution was framed.

The brief further argues that the appropriation of the newspaper columns to enforce the policy of publicity, without compensation, violates the Fifth Amendment, in taking property without due process of law.

Mr. Beck holds that the law has the sincerity of merit in that it makes no hypocritical pretence to being a means to carry out any constitutional power. He quotes the debates of Congress as showing that the authors and advocates of the bill admitted that its purpose was to compel a public disclosure of the ownership of newspapers and of the influences which dictated their policies.

This brief is an amplification of an opinion Mr. Beck wrote for the American Newspaper Publishers' Association, a report of which appeared on September 25 last.

"FLYING BOAT" A SUCCESS

New Curtiss Aeroplane Built for Navy Makes 59.5 Miles.

[By Telegram to The Tribune.] Bath, N. Y., Nov. 30.—The "flying boat," or new type of aeroplane, as built by Glenn H. Curtiss for the United States government, to-day fulfilled all requirements in its final tests, as made before Lieutenant Elyson, chief of the United States navy aeronautical department. The test was made at the Curtiss aviation station in Hammondsport.

The aeroplane reached a speed of 55.5 miles an hour, carrying the operator and 20 pounds extra weight. The machine tested to-day was built expressly for use in the navy, intended for launching by being hurled into the air by a catapult arrangement from the deck of a battleship.

"SUN DODGERS" VIEWED

Fields' Musical Production Frivols at the Broadway.

USUAL "NOVELTIES"

Monroe, as Always, Irish and Unctuous, Gives Joy to His Friends.

Without George W. Monroe "The Sun Dodgers" would have nothing to differentiate it from any other expensive and typical Broadway musical show. But with him it has a centre of gravity—or, better, of levity. Monroe as an Irishwoman "with a natural figure" is almost a tradition.

A stage ringing with his "gritsh" laughter, resounding with the whack of his playful fan and uproarious with his tantrums and sudden fits of hilarity, is a busy stage and one familiar to New York musical comedy audiences. Hosts of his friends were on hand last night to shower applause on every lift of his arched eyebrows, every stumbling of his troublesome feet, and every "very, very." A comedian with a following that likes to see him do the same old tricks and say the same old things needs no novelty in line or situation. And Mr. Monroe got his laugh last night without these aids to comedy.

"The Sun Dodgers" are a company of about forty girls and several men who prefer street lamps and electric bulbs to the light of day. Not finding New York shady enough they build a sunless city on Long Island with five million of the Widow O'Day's dollars. The bouncing widow, with a laugh, a stumble and a whack of her fan, declares this town "will beat Lillian Russell Sage's village to a frazzle."

Dodging about in the interstices of the plot a tireless chorus, properly graded in size and properly provided with smiles, appears in a different costume every two or three minutes to "group, evolve, dance, do stage business, produce lighting and other effects," all of which, the programme explains, has been devised by Ned Wayburn. To New York theatregoers Mr. Wayburn's "effects" are easily recognizable. They need no explanation. As soon as lights are switched off so that the chorus may walk in illuminated slippers, turn on bulbs inside their hats or drink electric light cocktails, a vision of Mr. Wayburn's professional sweater swims before the mind's dizzy eye. When, however, the chorus turns the restaurant chairs into suitcases and the tables into college hats one can almost hear Mr. Wayburn's voice in the offing, so present does he seem. All of these things happened last night in profusion.

There was also a profusion of vaudeville specialties. Bessie Wynn, with her eyes and her operatic imitations; Madeline Harris's purple lighted dance, the lariat dance and the "Dixie Love" of Charles Cartmell and Laura Harris were only a few of the specialties that were stirred in with plot, principals and chorus to make a "rich mixture."

There is quite a healthy suspicion abroad, just the same, in spite of "Broadway's" supposed liking for this sort of musical show, that even the musical comedy public yearns for something new.

"The Sun Dodgers" has been devised by the devisers of "Roly Poly"—Edgar Smith, E. Ray Goetz and Baldwin Sloane. CAST OF "THE SUN DODGERS":

Prattie Neilligh.....Bessie Wynn
Mrs. Honoria O'Day.....George W. Monroe
J. V. Harkin.....Harry Fisher
Rose Hubbs.....Ann Tasker
Valechick Knight.....Harold Crane
Hiram Hubbs.....Nat Fields
Told Hunter.....Denman Maley
Sam Porter.....Jerry Hart
Vera Light.....San Brennan
Trixie Turner.....Maud Gray
A. Gode Lamb.....Harry Clark
De Wale Taylor.....Jack Jarrett
I. M. Stude.....James C. Bresse
Official Muldoon.....James Dwyer
A cab driver.....Fred Duffy

AITKEN, SON & CO. LEASE STORE

Well Known Firm To Have Establishment in Fifth Avenue.

The leasing of the building at the southwest corner of Fifth avenue and 39th street by Aitken, Son & Co., one of the oldest establishments of its kind in the city, will recall the many rumors of the removals of the big department stores remaining below 22d street to the new retail shopping centre on and about Fifth avenue above 28th street.

Through three generations the Aitken name has stood for the best of those articles for women's wear and adornment which it imports, manufactures and sells at wholesale and retail. Its "special" and "clearance" sales are never of goods bought for "specials" or "clearances."

The daintiest articles of feminine finery obtainable, millinery and neckwear; the most beautiful offerings of rich and rare silks, laces, lingerie and garments for little and larger children are offered at both stores, Broadway, corner of 18th street, and Fifth avenue and 39th street.

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BURNS LET M'NAMARAS

ROOM TO UNCOVER PLOT

Feared to Arrest Dynamiters Too Soon Lest Men Higher in the Union Escape.

HOCKIN CALLED BETRAYER

"Whole Thing Would Blow Up" if He Moved Too Quickly, Detective Tells Jury—Woman Threatened.

Indianapolis, Nov. 30.—William J. Burns's story of his pursuit of the McNamaras and Orlie E. McManigal after "The Los Angeles Times" explosion was told by him at the "dynamite conspiracy" trial to-day.

At the time of the explosion, on October 1, 1910, he said, he was on a train from San Francisco to Los Angeles, and the next day he, as a detective, was employed by Mayor Alexander of Los Angeles to run down the dynamiters. He remained on the Pacific Coast until the latter part of December, when he returned to Chicago. In Chicago, he said, he met Herbert S. Hockin, now secretary of the ironworkers' union. Hockin is accused by the government of having betrayed the dynamiters while he himself was a dynamiter.

Hockin Balked at Killing.

Burns, in substance, testified: Hockin told me he would not have met me if it were not for the fact that the dynamiters were going to do a lot of killing. He said John J. McNamara, then secretary of the union, had employed James E. McNamara and McManigal to kill as many people as possible to bring about the result he hoped for. I told Hockin he was late with his information, as I knew all the facts already. Then I asked him where he got his information that people on the Pacific Coast were going to blow me up.

He said that Olaf A. Tveitmo, of San Francisco, was looking after the plot. I told him I believed Tveitmo would do it if he had a chance, for I had opposed Tveitmo in the San Francisco graft investigation, and I had sent my son Raymond to Minnesota to get a photograph of Tveitmo in the penitentiary uniform, and had it published in San Francisco.

I asked Hockin if it wasn't true that every member of the ironworkers' executive board knew about the explosion. He said neither they nor President Frank M. Ryan knew what John J. did, except, perhaps, Eugene A. Clancy, of San Francisco. I told him it wasn't possible for money to be appropriated every month for McNamara without others higher up knowing of it. I told Hockin I proposed to get the men higher up. I didn't want merely local men. He said John J. was the man I wanted.

I offered to pay Hockin to come into my employ, but he said he would accept only his expenses. I told him at that time Los Angeles had ceased to pay me and now I had not only to fight dynamiters, but also a class of men opposed to civic decency in San Francisco.

I told him on the day after the Los Angeles explosion I had informed Mayor Alexander that John J. McNamara and Tveitmo were behind the explosion. I impressed him with the fact that I didn't want to arrest John J. and James B. and depend on their making confessions, and I was afraid to watch J. J. at Indianapolis too much, as they might learn of it and the whole thing would blow up.

McManigal Mentioned Young.

Examined by Senator J. V. Kern, for the defence, about securing McManigal's first confession in Chicago shortly after the arrests, Burns was asked:

"Did McManigal implicate any one besides the McNamaras?"

"He mentioned only Michael J. Young, of Boston, in connection with the explosion at Springfield, Mass., and he implicated Hockin as having procured nitroglycerine and as having employed him to blow up a building in Detroit."

District Attorney Miller stated that only one more witness for the government will be called on Monday and then the government will rest its case.

Woman in Court on a Cot.

Threats of death for telling about explosions were related by Mrs. Alta M. Hawkins, Mrs. Hawkins, attended by a nurse, and suffering from injuries received in a recent shooting while hunting, was carried into court on a cot.

A few days before four explosions caused a loss of \$15,000 on the property of Albert von Spreckelsen, in Indianapolis, in 1909, Mrs. Hawkins testified she was told by Ernest G. W. Basey, an official of the ironworkers' union, that "something was going to happen" on jobs where non-union workmen were employed.

"Basey called me up on the telephone and told me I must keep my mouth shut. He said if I didn't I would be killed."

ART EXHIBITIONS AND SALES.

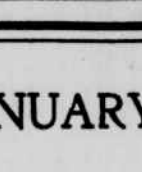
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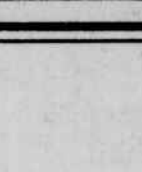
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